

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

JOSE SLAUGHTER,

Plaintiff,

v.

CIVIL ACTION NO. 5:08-cv-01016

UNITED STATES OF AMERICA,

Defendant.

**MEMORANDUM OPINION AND ORDER ADOPTING PROPOSED FINDINGS AND
RECOMMENDATION**

The Court has reviewed Plaintiff Jose Slaughter's Complaint [Docket 1], the Motion of the United States to Dismiss for Failure to State a Claim [Docket 9], Plaintiff's response to said motion [Docket 12], and the reply of the United States [Docket 13]. In his complaint, Plaintiff asserts a claim under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671, *et seq.*, and alleges that employees of the United States Bureau of Prisons were negligent in their diagnosis and treatment of his breast cancer. By Standing Order entered August 1, 2006, and filed in this case on August 21, 2008, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings and recommendation (PF&R). Magistrate Judge VanDervort filed his PF&R [Docket 18] on February 3, 2010. He found that the early symptoms of breast cancer in men, and appropriate treatment options, are not within the understanding of lay jurors by resort to common knowledge and experience. Accordingly, he found that Plaintiff is not excused from filing

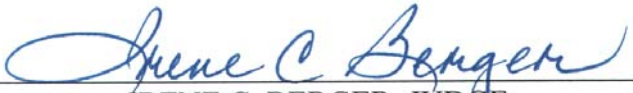
a screening certificate of merit pursuant to the requirements of West Virginia Code § 55-7B-6(c). Magistrate Judge VanDervort further found that Plaintiff's argument that the West Virginia Medical Professional Liability Act is unconstitutional "as applied" is without merit. Magistrate Judge Vandervort recommended that the undersigned grant the motion of the United States to dismiss Plaintiff's Complaint, and remove the case from the Court's docket.

The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir.1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In addition, this Court need not conduct a de novo review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections to the PF&R in this case were originally due on February 22, 2010. On February 24, 2010, the Court granted Plaintiff's motion to extend the deadline for objections until March 3, 2010. [Docket 19 &20]. To date, no objections have been filed.

Accordingly, the Court **ADOPTS** the PF&R [Docket 18] and **ORDERS** that the Motion to Dismiss for Failure to State a Claim [Docket 9] be **GRANTED**, that the Complaint [Docket 1] be **DISMISSED** and that the case be **REMOVED** from the docket. A separate Judgment Order will enter this day implementing the rulings contained herein.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: April 1, 2010



IRENE C. BERGER, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA